

The Honorable James L. Robart

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

NAXOS, LLC, d/b/a Spiros Greek Restaurant,

Plaintiff,

v.

AMERICAN FAMILY INSURANCE  
COMPANY, a foreign insurer,

Defendant.

No. 2:18-cv-01287-JLR

~~[PROPOSED]~~ PRETRIAL ORDER



**I. JURISDICTION**

Jurisdiction is vested in this Court by virtue of 28 U.S.C. § 1332 on the basis of diversity—  
Plaintiff Naxos, LLC (“Naxos”) is a citizen of the State of Washington and Defendant American  
Family Insurance Company (“American Family”) is a citizen of the State of Wisconsin—and the  
amount in controversy exceeding the jurisdictional amount of \$75,000.

**II. CLAIMS AND DEFENSES**

**A. Plaintiff Naxos, LLC.**

Plaintiff Naxos will pursue at trial the following claims against Defendant American  
Family:

1. American Family committed the tort of insurance bad faith by failing to perform a

[PROPOSED] PRETRIAL ORDER  
(2:18-cv-01287-JLR) - 1

**KELLER ROHRBACK L.L.P.**

1201 Third Avenue, Suite 3200  
Seattle, WA 98101-3052  
TELEPHONE: (206) 623-1900  
FACSIMILE: (206) 623-3384

1 full and fair investigation of Naxos's insurance claim and by elevating its interests above Naxos's  
2 interests.

3 2. American Family committed the tort of negligence by failing to perform a full and  
4 fair investigation of Naxos's insurance claim and by elevating its interests above Naxos's interests.

5 3. American Family violated the Consumer Protection Act both by committing an  
6 unfair or deceptive act or practice in trade of commerce causing injury to Naxos's property and by  
7 violating WAC 284-30-330; WAC 284-30-370; and WAC 284-30-380.

8 4. American Family violated the Insurance Fair Conduct Act by unreasonably denying  
9 Naxos's insurance claim and by unreasonably denying payment of benefits and American Family  
10 is liable for exemplary damages based on this and its violation of WAC 284-30-330; WAC 284-  
11 30-370; and WAC 284-30-380.

12 5. American Family breached the insurance contract by failing to perform contractual  
13 duties when due.

14 Plaintiff Naxos will pursue the following affirmative defenses:

15 1. American Family is estopped from contesting coverage.

16 2. Naxos did not commit fraud or make any intentional misrepresentations in the  
17 application for insurance or the claim for insurance benefits.

18 **B. Defendant American Family.**

19 Defendant American Family will pursue at trial the following claims against Plaintiff  
20 Naxos:

21 1. Naxos breached the terms of the applicable insurance contract by its representatives  
22 making material misrepresentations and concealing material information from American Family,  
23 both in the inception of the contract and in the investigation of Naxos's insurance claim.

1           2.     Naxos has an affirmative duty to provide accurate, honest and complete  
2 information, and failed to do so. This failure has caused American Family to incur damages as a  
3 result.

4           3.     Naxos has committed bad faith and violated the CPA through its actions of  
5 misrepresentation and concealment.

6  
7           Defendant American Family will pursue the following affirmative defenses:

8           1.     At all times material, American Family's investigation and adjustment of the claims  
9 have been reasonable, in compliance with the terms and conditions of the insurance contract, and  
10 in compliance with Washington State law in light of the facts and circumstances surrounding the  
11 loss and claims submitted. As a result, all of Naxos's extra-contractual claims are without merit.

12           2.     At all times relevant American Family's actions were justified.

13           3.     To the extent that American Family had any duties to the Naxos, American Family  
14 fulfilled those duties.

15  
16           4.     Naxos's damages, if any, were proximately caused or contributed to by Naxos's  
17 own acts and/or omissions.

18           5.     Naxos has failed to mitigate its damages.

19           6.     Any injuries suffered by Naxos were caused in whole or in part by Naxos,  
20 individually, and/or third persons or entities and American Family is entitled to allocation of fault  
21 under RCW 4.22 et seq.

22           7.     Naxos's loss, if any, may have been caused or contributed to by superseding and/or  
23 intervening acts over which American Family had no control or responsibility.

24           8.     Should Naxos recover any damages, American Family is entitled to setoff in the  
25 amount of any money already paid to Naxos.  
26

1 9. Naxos made intentional misrepresentations and/or concealments of material fact to  
2 American Family.

3 10. Naxos breached their respective obligations of good faith and fair dealing and  
4 therefore is not entitled to any recovery.

5 11. Naxos acted in bad faith.

6 12. Naxos's claims are barred, in whole or in part, by the doctrine of unclean hands.

7  
8 **III. ADMITTED FACTS**

9 The following facts are admitted or otherwise undisputed between the parties:

10 1. This case involves a black water event occurring at Spiros Greek Restaurant in the  
11 summer of 2015.

12 2. Spiros Greek Restaurant was operated by Naxos, LLC.

13 3. As a result, all business activities at Spiros were shut down.

14 4. Naxos notified American Family of the loss on August 6, 2015.

15 5. Naxos held a Businessowners Policy issued by American Family, numbered  
16 46X2414102, which was in effect at the time of the loss.

17 6. Naxos retained 1-800 Water Damage, a water mitigation company, to mitigate and  
18 remediate the loss.

19 7. American Family retained Servpro to inspect the site and review 1-800 Water  
20 Damage's scope of repair.

21 8. Servpro concurred with 1-800's proposed scope, which included removal of the  
22 flooring in the kitchen/pantry area, flood cutting the walls, and removal of Naxos's kitchen  
23 equipment.

24 9. On August 31, 2015, in response to a request from American Family, 1-800 advised  
25  
26

1 that the cost of remediation would be between \$85,000 and \$100,000, plus pump out and solid  
2 removal.

3 10. On September 4, 2015, American Family retained an independent adjuster, who  
4 speculated that the leak may have been ongoing prior to the reported loss.

5 11. American Family hired an engineer, Scott Thomas of CASE Forensics, and issued  
6 a Reservation of Rights letter on September 11, 2015, indicating there might not be coverage for  
7 the loss.

8 12. Naxos contacted American Family on September 15, 2015, expressing concern  
9 about the delay in the investigation of the loss.

10 13. On October 1, 2015, American Family advised engineer Scott Thomas that he may  
11 cease investigation into the cause of the loss.

12 14. Thomas recommended that an industrial hygienist be contacted if questions surface  
13 regarding proper remediation.

14 15. American Family first issued payment to Naxos related to the structural loss on  
15 October 22, 2015, in the amount of \$43,732.48.

16 16. By February 1, 2016, Naxos had hired Armata Construction out of its own funds to  
17 take over remediation from 1-800.

18 17. In March 2016, Naxos retained Dudley Gaouette, a public adjuster with Adjusters  
19 International.

20 18. Susan Evans, an industrial hygienist, visited the site twice and issued a report  
21 documenting her findings and remediation of the loss and outlining a protocol to remediate the  
22 contamination discovered.

23 19. Evans later re-inspected the site in December 2016 – after Armata had performed  
24  
25  
26

1 selective demolition at the site allowing further access and investigation – and supplemented her  
2 report.

3 20. Evans' supplemental report, issued on January 17, 2017, recommended a protocol  
4 that included removal of kitchen flooring, contaminated floor joists, and removal of pipes.

5 21. Armata used the Evans protocol to prepare its repair bid for the building, which  
6 totaled \$624,519 at replacement cost value.

7 22. American Family retained Madsen Kneppers & Associates (MKA), a consultant,  
8 to review the costs and scope of repairs.

9 23. MKA provided an estimate on October 19, 2016 of \$342,368, reduced to \$265,882  
10 with depreciation to actual cash value, and subtracting the costs of supposed code upgrades.

11 24. In November 2016, American Family paid Naxos \$221,149.88, crediting the prior  
12 October 2015 payment.

13 25. Naxos demanded appraisal of the amount of loss in June 2017.

14 26. After Naxos demanded appraisal, American Family retained its own industrial  
15 hygienist at the urging of its appointed appraiser.

16 27. On March 6, 2018, the Appraisal Panel issued an Appraisal Award, signed by all  
17 three members of the Appraisal Panel, finding the value of Naxos's claimed loss for the building  
18 and BPP to be \$658,921 in replacement cost value (\$566,209.17 in actual cash value).

19 28. Naxos filed the instant action against American Family on August 10, 2018.

20 29. Naxos served a notice on American Family under the Insurance Fair Conduct Act  
21 more than 20 days before filing this action.

22 30. Determining coverage, the cost to repair the building, the value of contents, and the  
23 loss of business income were all material aspects of the claim.  
24  
25  
26

IV. ISSUES OF LAW

The following are the issues of law to be determined by the Court:

1. Whether American Family committed insurance bad faith;
2. Whether American Family violated the Washington Consumer Protection Act;
3. Whether American Family violated the Washington Insurance Fair Conduct Act;
4. Whether American Family committed the tort of negligence; and
5. Whether American Family should be estopped from contesting coverage.

In addition to Naxos's issues of law, American Family raises the following issues of law as a counterclaim:

1. Whether Naxos and/or its representatives intentionally misrepresented or concealed any material fact.
2. Whether Naxos is judicially estopped from seeking more than \$6,300.00 in damages to BPP because of Naxos' declarations regarding such in their bankruptcy case no. 14-15859.
3. Whether Naxos' claims asserted against American Family should be dismissed when Naxos' representatives misrepresented numerous facts and presented fraudulent information.
4. Whether Naxos breached the terms of the applicable insurance contract by its representatives making material misrepresentations and concealing material information from American Family, both in the inception of the contract and in the investigation of Plaintiffs insurance claim.
5. Whether Naxos has an affirmative duty to provide accurate, honest and complete information, and failed to do so.
6. Whether Naxos has committed bad faith and violated the CPA through its actions

1 of misrepresentation and concealment.

2 7. Whether American Family's actions were justified.

3 8. Whether Naxos' damages, if any, were proximately caused or contributed to by  
4 Plaintiff's own acts and/or omissions.

5 9. Whether Naxos failed to mitigate its damages.

6 10. Whether injuries suffered by Naxos were caused in whole or in part by Plaintiff,  
7 individually, and/or third persons or entities.

8 11. Whether Naxos' loss, if any, may have been caused or contributed to by  
9 superseding and/or intervening acts over which American Family had no control or responsibility.

10 12. Whether Naxos breached their respective obligations of good faith and fair dealing  
11 and therefore is not entitled to any recovery.

12 13. Whether Naxos' claims are barred, in whole or in part, by the doctrine of unclean  
13 hands.

14  
15  
16 **V. EXPERT WITNESSES**

17 **A. Plaintiff's Expert Witnesses:**

18 1. Dennis Smith  
19 4800 Fremont Avenue North, Suite 202  
20 Seattle, WA 98103

***WILL TESTIFY***

21 Mr. Smith has knowledge and opinions concerning American Family's unreasonable claim  
22 handling and investigation consistent with the expert report he prepared.

23 2. Bill Partin  
24 Mueller & Partin  
25 400 108<sup>th</sup> Avenue NE, Suite 615  
26 Bellevue, WA 98004

***WILL TESTIFY***

Mr. Partin has knowledge and opinions concerning the economic damages of Naxos's  
building and business consistent with the expert report he prepared.



3. Susan Evans, CIH, CSP, P.E.  
ESI  
700 South Industrial Way  
Seattle, WA 98108

***WILL TESTIFY***

Ms. Evans has knowledge and opinions concerning the scope of damage and necessary remediation for Naxos's building consistent with the declaration and reports she prepared.

4. Ryan Miletech  
Armata Construction Services, LLC  
1416 NW 46<sup>th</sup> Street, Suite 105  
Seattle, WA 98107

***WILL TESTIFY***

Mr. Miletech has knowledge and opinions concerning the repair bid for Naxos's building consistent with the declaration and repair bid he prepared.

5. Mark A. Schaefer, P.E., S.E.  
Pacific Engineering Technologies, Inc.  
2150 North 107<sup>th</sup> Street, Suite 320  
Seattle, WA 98133

***POSSIBLE WITNESS***

Mr. Schaefer has knowledge and opinions concerning the engineering drawings used in the repair bid for Naxos's building consistent with the declaration he prepared.

**B. Defendant's Expert Witnesses:**

1. Melody Ewers, CPA, CFF, CFE  
Baker Tilly Virchow Krause, LLP  
5335 Meadows Road, Suite 230  
Lake Oswego, OR 97035-3189

***WILL TESTIFY***

Ms. Ewers has knowledge and opinions concerning the payroll, bookkeeping, and finances of Naxos LLC, as well as the economic damages of Naxos LLC consistent with the expert reports she prepared.

*Plaintiff Naxos objects to any testimony at trial from Defendant American Family's experts #2-6 below because they were not previously disclosed as experts, nor has American Family met any of the requirements contained in FRCP 26(a)(2) with respect to each witness:*

***MAY TESTIFY***

**MAY TESTIFY**

**MAY TESTIFY**

**MAY TESTIFY**

**KELLER ROHRBACK L.L.P.**  
1201 Third Avenue, Suite 3200  
Seattle, WA 98101-3052  
TELEPHONE: (206) 623-1900  
FACSIMILE: (206) 623-3384

**MAY TESTIFY**

## VI. OTHER WITNESSES

**WILL TESTIFY**

**WILL TESTIFY**

**WILL TESTIFY**

**KELLER ROHRBACK L.L.P.**  
1201 Third Avenue, Suite 3200  
Seattle, WA 98101-3052  
TELEPHONE: (206) 623-1900  
FACSIMILE: (206) 623-3384

1 Naxos's property.

2 4. American Family by 30(b)(6) Deponent  
3 c/o Cole | Wathen | Leid | Hall P.C.  
4 1505 Westlake Ave N, Suite 700  
Seattle, WA 98109

***WILL TESTIFY***

5 American Family's 30(b)(6) deponent representatives have knowledge regarding the  
6 substance of events, the timeline of events, American Family's claim handling and investigation,  
7 and American Family's relevant policies and procedures.

8 5. Audrey Zambrano  
9 13110 14 Ave S  
10 Burien, WA 98168  
(253) 327-0229

***POSSIBLE WITNESS***

11 Ms. Zambrano worked as a manager at Spiros Greek Restaurant and has knowledge  
12 surrounding the restaurant's business operation.

13 6. Kara Harvick  
14 303 17<sup>th</sup> St SE #8  
15 Auburn, WA 98002  
16 (253) 293-2753

***POSSIBLE WITNESS***

17 Ms. Harvick worked at Spiros Greek Restaurant and has knowledge surrounding the  
18 restaurant's business operation.

19 **B. Defendant's Other Witnesses:**

20 1. Dudley Gaouette  
21 Adjusters International Pacific Northwest, Inc.  
22 4300 26<sup>th</sup> Ave W  
Seattle, WA 98199

***WILL TESTIFY***

23 Mr. Gaouette was retained by Naxos as a Public Adjuster and represented Naxos as a  
24 30(b)(6) representative.

25 2. Trina Loukas  
26 c/o Lether Law Group  
1848 Westlake Ave N, Suite 100  
Seattle, WA 98109

***WILL TESTIFY***

1 Ms. Loukas claims to be a manager at Spiros Greek Restaurant and has knowledge  
2 surrounding the substance of events, the timeline of events, and Naxos' damages.

3 3. William Loukas *WILL TESTIFY*  
4 c/o Lether Law Group  
5 1848 Westlake Ave N, Suite 100  
6 Seattle, WA 98109

7 Mr. Loukas was claimed to be a manager at Spiros Greek Restaurant and has knowledge  
8 surrounding the substance of events, the timeline of events, and Naxos' damages.

9 4. John Loukas *WILL TESTIFY*  
10 c/o Lether Law Group  
11 1848 Westlake Ave N, Suite 100  
12 Seattle, WA 98109

13 Mr. Loukas was claimed to be a manager at Spiros Greek Restaurant and has knowledge  
14 surrounding the substance of events, the timeline of events, and Naxos' damages.

15 5. Gayle Anderson *WILL TESTIFY*  
16 c/o Lether Law Group  
17 1848 Westlake Ave N, Suite 100  
18 Seattle, WA 98109

19 Ms. Anderson was represented to be an employee of Naxos, who turned out to be hired as  
20 a public adjuster to help manage Naxos' insurance claim and has knowledge surrounding the  
21 substance of events, the timeline of events, and Naxos' damages.

22 6. Johnny Lim *WILL TESTIFY*  
23 c/o Cole | Wathen | Leid | Hall P.C.  
24 1505 Westlake Ave N, Suite 700  
25 Seattle, WA 98109

26 Mr. Lim has knowledge regarding the inception of the subject Policy for insurance and  
surrounding substance of events regarding the subject Policy.

7. Tou Vang *WILL TESTIFY*  
c/o Cole | Wathen | Leid | Hall P.C.  
1505 Westlake Ave N, Suite 700  
Seattle, WA 98109

1 Mr. Vang has knowledge regarding the underwriting of the subject Policy for insurance  
2 and the events surrounding the formation of the subject policy.

3 8. American Family 30(b)(6) Representative **MAY TESTIFY**  
4 c/o Cole | Wathen | Leid | Hall P.C.  
5 1505 Westlake Ave N, Suite 700  
6 Seattle, WA 98109

7 American Family 30(b)(6) representative has knowledge regarding the substance of events,  
8 the timeline of events, American Family's claim handling and investigation, and American  
9 Family's relevant policies and procedures.

10 9. Erik Boe **WILL TESTIFY**  
11 c/o Cole | Wathen | Leid | Hall P.C.  
12 1505 Westlake Ave N, Suite 700  
13 Seattle, WA 98109

14 Mr. Boe has knowledge regarding the substance of events, the timeline of events, American  
15 Family's claim handling and investigation, and American Family's relevant policies and  
16 procedures.

17 10. Records Custodian for the City of Kent, Washington **MAY TESTIFY**  
18 220 Fourth Ave. S  
19 Kent, WA 98032

20 The City of Kent has knowledge regarding the code violations committed by Naxos and  
21 other information regarding compliance with local laws.

22 11. Records Custodian for the King County **MAY TESTIFY**  
23 Department of Health  
24 908 Jefferson St  
25 Seattle, WA 98104

26 The King County Department of Health has knowledge regarding the code violations  
committed by Naxos and other information regarding compliance with local laws.

12. Maggie King – Service Coordinator  
 1-800 Water Damage  
 12600 Interurban Ave S #130  
 Tukwila, WA 98168

**MAY TESTIFY**

1-800 Water Damage was hired by Naxos, LLC to inspect the premises and conduct the necessary repairs. Ms. King may testify regarding Naxos' claims and alleged damages as well as the circumstances surrounding the incident and other relevant information.

## VII. EXHIBITS

### A. Plaintiff's Exhibits:

Ex. #	Description	Authenticity Stipulated	Admissibility Stipulated	Objection	Admitted
1	Appraisal Award Form dated March 6, 2018 (NAXOS-AMFAM)	Stipulated	Disputed	FRE 104(b); FRE 401-403	
2	Photos of Incident and Damage (NAXOS-AMFAM00398-00407)	Stipulated	Disputed	FRE 104(b); FRE 401-403	
3	Reservation of Rights Letter dated September 11, 2015 (NAXOS-AMFAM01374-01375)	Stipulated	Stipulated		
4	Belfor Estimate dated October 21, 2015 (NAXOS-AMFAM01678-01700)	Stipulated	Stipulated		
5	Tim Hanley Estimates dated October 28, 2015; January 29, 2016; February 15, 2016; and March 6, 2016 (NAXOS-AMFAM00802-00804; 00809-00811; 00931-00932; 00805-00808)	Stipulated	Stipulated		
6	MKA Estimate dated April 1, 2016 (NAXOS-AMFAM00488-00512)	Stipulated	Stipulated		

7	Belfor Estimate dated October 15, 2016 (NAXOS-AMFAM00951-00980)	Stipulated	Stipulated		
8	MKA and Belfor Estimate dated October 19, 2016 (NAXOS-AMFAM00480-00487)	Stipulated	Stipulated		
9	Armata Estimate dated March 19, 2017 (NAXOS-AMFAM02143-02159)	Stipulated	Disputed	FRE 104(b); FRE 401-403; FRE 901(a)	
10	Emails between Scott Thomas and Drew Gillette dated August 17 through September 29, 2015 (NAXOS-AMFAM01729-01733)	Stipulated	Disputed	FRE 104(b); FRE 401-403; FRE 901(a)	
11	August 2015 Emails Between 1-800 and Erik Boe (NAXOS-AMFAM00311-00312)	Stipulated	Stipulated		
12	Email from Drew Gillette to Erik Boe dated August 27, 2015 (NAXOS-AMFAM00310)	Stipulated	Stipulated		
13	Email from Tim Hanley dated September 13, 2015 (NAXOS-AMFAM01274)	Stipulated	Disputed	FRE 104(b); FRE 401-403; FRE 901(a)	
14	Email from Erik Boe to Gayle Anderson dated September 15, 2015 (NAXOS-AMFAM01258)	Stipulated	Stipulated		
15	Erik Boe Email to Dudley Gaouette dated March 18, 2016 (NAXOS-AMFAM00327)	Stipulated	Stipulated		
16	Emails between Erik Boe and Tim Hanley	Stipulated	Stipulated		

[PROPOSED] PRETRIAL ORDER  
(2:18-cv-01287-JLR) - 16

**KELLER ROHRBACK L.L.P.**

1201 Third Avenue, Suite 3200  
Seattle, WA 98101-3052  
TELEPHONE: (206) 823-1900  
FACSIMILE: (206) 823-3384



	dated March 25, 2016 (NAXOS-AMFAM01712-01713)				
17	Melody Ewers Email to Erik Boe dated July 12, 2016 (NAXOS-AMFAM01031-01033)	Stipulated	Stipulated		
18	Emails between Erik Boe and Dudley Gaouette dated October 12 through October 14, 2016 (NAXOS-AMFAM01795-01797)	Stipulated	Stipulated		
19	Erik Boe Email dated November 2, 2016 (NAXOS-AMFAM00797)	Stipulated	Disputed	FRE 104(b); FRE 401-403; FRE 901(a)	
20	Emails from Erik Boe dated June 8, 2016, March 28, 2017, and May 22, 2017, regarding MKA's Inspections and Analysis (NAXOS-AMFAM01802; 01043; 01840)	Stipulated	Stipulated		
21	Declaration of Ryan Miletech regarding Armata Construction Invoice (\$34,681.31)	Disputed	Disputed	FRE 104(b); FRE 401-403; FRE 801(c); FRE 802; FRE 901(a)	
22	MDE, Inc. Invoices (\$9,286.89)	Disputed	Disputed	FRE 104(b); FRE 401-403; FRE 901(a)	
23	ESI Invoices (\$3,821.94 & \$4,704.24)	Disputed	Disputed	FRE 104(b); FRE 401-403; FRE 901(a)	

[PROPOSED] PRETRIAL ORDER  
(2:18-cv-01287-JLR) - 17

**KELLER ROHRBACK L.L.P.**

1201 Third Avenue, Suite 3200  
Seattle, WA 98101-3052  
TELEPHONE: (206) 623-1900  
FACSIMILE: (206) 623-3384

24	Declaration of Mark Schaefer regarding Pacific Engineering Invoices (\$8,306.77 & \$2,525.70)	Disputed	Disputed	FRE 104(b); FRE 401-403; FRE 801(c); FRE 802; FRE 901(a)	
25	Nathanael Cook Invoice (\$11,422.82)	Disputed	Disputed	FRE 104(b); FRE 401-403; FRE 901(a)	
26	Judicial Dispute Resolution Invoice (\$1,000)	Disputed	Disputed	FRE 104(b); FRE 401-403; FRE 901(a)	
27	Adjusters International Invoice (\$50,103)	Stipulated	Disputed	FRE 104(b); FRE 401-403; FRE 901(a)	
28	ICS: Financial Summary & Transactions for Date of LOBI Payment and Month Naxos Lost Property in Foreclosure (NAXOS-AMFAM00298-00309)	Stipulated	Stipulated		
29	RGL Forensics Average Monthly Business Income Loss (NAXOS-AMFAM01279)	Stipulated	Stipulated		
30	Pre-Incident Profit and Loss Statement (NAXOS-AMFAM01073)	Stipulated	Stipulated		
31	William Partin Report Attachments/Schedules	Disputed	Disputed	FRE 104(b); FRE 401-403; FRE 801(c); FRE 802; FRE 901(a)	

[PROPOSED] PRETRIAL ORDER  
(2:18-cv-01287-JLR) - 18

**KELLER ROHRBACK L.L.P.**

1201 Third Avenue, Suite 3200  
Seattle, WA 98101-3052  
TELEPHONE: (206) 823-1900  
FACSIMILE: (206) 623-3384

32	Claim Notes (NAXOS-AMFAM00007-00173)	Stipulated	Stipulated		
33	Claim Division Corporate Guidelines for Property Claims (NAXOS-AMFAM02235-02247)	Stipulated	Disputed	FRE 104(b); FRE 401-403; FRE 801(c); FRE 802; FRE 901(a); Confidential and subject to the protective order.	
34	CFR Claim Standard Work for Water & Plumbing (CONFIDENTIAL) (NAXOS-AMFAM05057-05059)	Stipulated	Disputed	FRE 104(b); FRE 401-403; FRE 801(c); FRE 802; FRE 901(a); Confidential and subject to the protective order.	
35	Good Faith Claims Handling PowerPoint (CONFIDENTIAL) (NAXOS-AMFAM05062-05101)	Stipulated	Disputed	FRE 104(b); FRE 401-403; FRE 801(c); FRE 802; FRE 901(a); Confidential and subject to the protective order.	
36	Property Best Practices for Water Leakage Losses (CONFIDENTIAL) (NAXOS-AMFAM05060-05061)	Stipulated	Disputed	FRE 104(b); FRE 401-403; FRE 801(c); FRE 802; FRE 901(a);	

[PROPOSED] PRETRIAL ORDER  
(2:18-cv-01287-JLR) - 19

**KELLER ROHRBACK L.L.P.**

1201 Third Avenue, Suite 3200  
Seattle, WA 98101-3052  
TELEPHONE: (206) 623-1900  
FACSIMILE: (206) 623-3384

				Confidential and subject to the protective order.	
37	Underwriting File Photos (CONFIDENTIAL) (NAXOS-AMFAM04892-04907)	Stipulated	Disputed	FRE 104(b); FRE 401-403; FRE 801(c); FRE 802; FRE 901(a); Confidential and subject to the protective order.	
38	Naxos Secretary of State and LLC Formation Documents	Stipulated	Stipulated		
39	Johnny Lim File Notes (Lim Production 000317-000329)	Stipulated	Stipulated		
40	Payment Receipt and Handwritten Note Showing Asimo Loukas Loan (Lim Production 000282-000284)	Stipulated	Stipulated		
41	Evidence of Property Insurance and Certificate of Liability Insurance (Lim Production 000281-000282)	Stipulated	Stipulated		
42	Naxos Bankruptcy Personal Property Schedule (NAXOS-AMFAM02499-02503)	Stipulated	Stipulated		
43	Gayle Anderson Fax from Melody Ewers File	Stipulated	Stipulated		
44	RGL Forensics' Schedules Showing John Loukas's and Gayle Anderson's	Stipulated	Stipulated		

[PROPOSED] PRETRIAL ORDER  
(2:18-cv-01287-JLR) - 20

**KELLER ROHRBACK L.L.P.**

1201 Third Avenue, Suite 3200  
Seattle, WA 98101-3052  
TELEPHONE: (206) 623-1900  
FACSIMILE: (206) 623-3384

	Employment Status (NAXOS- AMFAM01286; 01287; 01581; 01622; 01633; 01912; 01923; 02082; 2100; 02169)				
45	Food Service Inspection Reports from Pre- Policy Inception (NAXOS- AMFAM05585-05656)	Stipulated	Stipulated		
46	Food Service Inspection Report dated June 24, 2015 (NAXOS- AMFAM05672-05675)	Stipulated	Stipulated		
47	MDE Inc. Amended Report and Work Plan (NAXOS- AMFAM01861-01879)	Disputed	Disputed	FRE 104(b); FRE 401- 403; FRE 801(c); FRE 802; FRE 901(a)	
48	ESI Supplemental Report and Work Plan (NAXOS- AMFAM02196-02213)	Disputed	Disputed	FRE 104(b); FRE 401- 403; FRE 801(c); FRE 802; FRE 901(a)	
49	Notice of Trustee's Sale for Naxos's Building	Disputed	Disputed	FRE 104(b); FRE 401- 403; FRE 801(c); FRE 802; FRE 901(a)	
50	Excise Tax Document	Disputed	Disputed	FRE 104(b); FRE 401- 403; FRE 801(c); FRE 802; FRE 901(a)	
51	Timeline of Key Events	Disputed	Disputed	FRE 104(b);	

[PROPOSED] PRETRIAL ORDER  
(2:18-cv-01287-JLR) - 21

**KELLER ROHRBACK L.L.P.**

1201 Third Avenue, Suite 3200  
Seattle, WA 98101-3052  
TELEPHONE: (206) 623-1900  
FACSIMILE: (206) 623-3384

				FRE 401-403; FRE 801(c); FRE 802; FRE 901(a)	
52	Naxos Closing Statement from Appraisal -- 02.23.2018 Email from Dudley Gaouette	Disputed	Disputed	FRE 104(b); FRE 401-403; FRE 801(c); FRE 802; FRE 901(a)	
53	Naxos BPP Spreadsheet	Disputed	Disputed	FRE 104(b); FRE 401-403; FRE 801(c); FRE 802; FRE 901(a)	

**B. Defendant's Exhibits:**

Ex. #	Description	Authenticity Stipulated	Admissibility Stipulated	Objection	Admitted
A-1	King County Department of Assessment Records; Parcel Records (NAXOS-AMFAM02395-2397)	Disputed	Disputed	FRE 104(b); FRE 401-403; FRE 901(a)	
A-2	Naxos Financial Records (NAXOS-AMFAM02398-2443; 1509-1534; 1541-1545; 2028)	Stipulated	Disputed	FRE 104(b); FRE 401-403	
A-3	Naxos Bankruptcy Records; Case No. 14-15859 (NAXOS-AMFAM02444-3584)	Disputed	Disputed	FRE 104(b); FRE 401-403; FRE 404; FRE 608; FRE 901(a)	
A-4	Asimo Loukas Bankruptcy Records; Case No. 15-15126	Disputed	Disputed	FRE 104(b); FRE 401-403; FRE 404; FRE	

[PROPOSED] PRETRIAL ORDER  
(2:18-cv-01287-JLR) - 22

**KELLER ROHRBACK L.L.P.**

1201 Third Avenue, Suite 3200  
Seattle, WA 98101-3052  
TELEPHONE: (206) 623-1900  
FACSIMILE: (206) 623-3384

				608; FRE 901(a); FRCP 37(c)(1)	
A-5	Milos Island Bankruptcy Records; Case No. 14- 15861	Disputed	Disputed	FRE 104(b); FRE 401- 403; FRE 404; FRE 608; FRE 901(a); FRCP 37(c)(1)	
A-6	City of Kent Photographs (NAXOS- AMFAM04524-4569)	Disputed	Disputed	FRE 104(b); FRE 401- 403; FRE 901(a)	
A-7	City of Kent Employee Emails regarding the Naxos closure (NAXOS- AMFAM04592-4595)	Disputed	Disputed	FRE 104(b); FRE 401- 403; FRE 801(c); FRE 802; FRE 901(a)	
A-8	City of Kent; Notice of Violation; 8/6/15 (NAXOS- AMFAM04596-4601)	Disputed	Disputed	FRE 104(b); FRE 401- 403; FRE 801(c); FRE 802; FRE 901(a)	
A-9	City of Kent; Notice of Violation; 8/13/15 (NAXOS- AMFAM04602-4613)	Disputed	Disputed	FRE 104(b); FRE 401- 403; FRE 801(c); FRE 802; FRE 901(a)	
A-10	Public Heath; Food Establishment Inspection Report; 8/5/15 (NAXOS- AMFAM04700)	Disputed	Disputed	FRE 104(b); FRE 401- 403; FRE 404; FRE 801(c); FRE 802; FRE 901(a)	
A-11	Kent Fire Department; Incident Report; 7/13/15 (NAXOS- AMFAM04713-4715)	Disputed	Disputed	FRE 104(b); FRE 401- 403; FRE 404; FRE	

[PROPOSED] PRETRIAL ORDER  
(2:18-cv-01287-JLR) - 23

KELLER ROHRBACK L.L.P.

1201 Third Avenue, Suite 3200  
Seattle, WA 98101-3052  
TELEPHONE: (206) 623-1900  
FACSIMILE: (206) 623-3384

				801(c); FRE 802; FRE 901(a)	
A-12	City of Kent Photographs (NAXOS- AMFAM04776-4777)	Disputed	Disputed	FRE 104(b); FRE 401- 403; FRE 901(a)	
A-13	City of Kent; Permit Application regarding plumbing; 3/21/11 (NAXOS- AMFAM04813-4817)	Disputed	Disputed	FRE 104(b); FRE 401- 403; MSJ; FRE 801(c); FRE 802; FRE 901(a)	
A-14	City of Kent; Permit Application regarding plumbing; 11/27/12 (NAXOS- AMFAM04835-4837)	Disputed	Disputed	FRE 104(b); FRE 401- 403; MSJ; FRE 801(c); FRE 802; FRE 901(a)	
A-15	ICS: Financial Summary & Transactions (NAXOS- AMFAM00298-309)	Stipulated	Disputed	FRE 104(b); FRE 401- 403	
A-16	Email from Erik Boe to Trina Loukas regarding LOBI; 8/7/15 (NAXOS- AMFAM00634)	Stipulated	Disputed	FRE 401- 403; FRE 106; FRE 801(c); FRE 802	
A-17	RGL Forensics Records (NAXOS- AMFAM00625-631; 642-661; 1562-1645)	Disputed	Disputed	FRE 104(b); FRE 401- 403; FRE 801(c); FRE 802; FRE 901(a)	
A-18	BPP Chart ((NAXOS- AMFAM00832-874)	Disputed	Disputed	FRE 104(b); FRE 401- 403; FRE 801(c); FRE 802; FRE 901(a)	
A-19	MKA Reports and Records	Disputed	Disputed	FRE 104(b); FRE 401- 403; FRE 801(c); FRE 802; FRE	

[PROPOSED] PRETRIAL ORDER  
(2:18-cv-01287-JLR) - 24

**KELLER ROHRBACK L.L.P.**

1201 Third Avenue, Suite 3200  
Seattle, WA 98101-3052  
TELEPHONE: (206) 623-1900  
FACSIMILE: (206) 623-3384



				901(a)	
A-20	RGL Reports and Records	Disputed	Disputed	FRE 104(b); FRE 401-403; FRE 801(c); FRE 802; FRE 901(a)	
A-21	Belfor Reports and Records	Disputed	Disputed	FRE 104(b); FRE 401-403; FRE 801(c); FRE 802; FRE 901(a)	
A-22	Case Forensic Reports and Records	Disputed	Disputed	FRE 104(b); FRE 401-403; FRE 801(c); FRE 802; FRE 901(a)	
A-23	Farrell & Associates Reports and Records	Disputed	Disputed	FRE 104(b); FRE 401-403; FRE 801(c); FRE 802; FRE 901(a)	
A-24	ARCH Consulting Reports and Records	Disputed	Disputed	FRE 104(b); FRE 401-403; FRE 801(c); FRE 802; FRE 901(a)	
A-25	Email from Erik Boe to Gayle Anderson; 9/15/15 (NAXOS-AMFAM01258-1259)	Stipulated	Disputed	FRE 104(b); FRE 401-403; FRE 801(c); FRE 802	
A-26	Payroll info from Gayle Anderson (NAXOS-AMFAM01299-1304)	Stipulated	Disputed	FRE 104(b); FRE 401-403; FRE 801(c); FRE 802	
A-27	State of Washington Department of Revenue, Continuing Lien (NAXOS-	Disputed	Disputed	FRE 104(b); FRE 401-403; FRE 404; FRE	

[PROPOSED] PRETRIAL ORDER  
(2:18-cv-01287-JLR) - 25

**KELLER ROHRBACK L.L.P.**

1201 Third Avenue, Suite 3200  
Seattle, WA 98101-3052  
TELEPHONE: (206) 623-1900  
FACSIMILE: (206) 623-3384

	AMFAM01339-1368)			801(c); FRE 802; FRE 901(a)	
A-28	Inspection Photos, Erik Boe (NAXOS- AMFAM01376-1453)	Disputed	Disputed	FRE 104(b); FRE 401- 403; FRE 801(c); FRE 802; FRE 901(a)	
A-29	Department of the Treasury – Notice of Levy (NAXOS- AMFAM01535-1540)	Disputed	Disputed	FRE 104(b); FRE 401- 403; FRE 404; FRE 901(a)	
A-30	American Family Claims Diary (NAXOS- AMFAM00007-173)	Disputed	Disputed	FRE 104(b); FRE 401- 403; FRE 801(c); FRE 802; FRE 901(a)	
A-31	Naxos Financial Records from Plaintiff	Disputed	Disputed	FRE 104(b); FRE 401- 403; FRE 801(c); FRE 802; FRE 901(a)	
A-32	Public Health – Food Service Inspection Report; 5/17/13 (NAXOS- AMFAM05643-5647)	Disputed	Disputed	FRE 104(b); FRE 401- 403; FRE 404; FRE 801(c); FRE 802; FRE 901(a)	
A-33	Public Health – Food Service Inspection Report; 5/20/13 (NAXOS- AMFAM05648-5652)	Disputed	Disputed	FRE 104(b); FRE 401- 403; FRE 404; FRE 801(c); FRE 802; FRE 901(a)	
A-34	Public Health – Food Service Inspection Report; 7/17/14 (NAXOS- AMFAM05660-5663)	Disputed	Disputed	FRE 104(b); FRE 401- 403; FRE 404; FRE 801(c); FRE	

[PROPOSED] PRETRIAL ORDER  
(2:18-cv-01287-JLR) - 26

**KELLER ROHRBACK L.L.P.**

1201 Third Avenue, Suite 3200  
Seattle, WA 98101-3062  
TELEPHONE: (206) 623-1900  
FACSIMILE: (206) 623-3384

				802; FRE 901(a)	
A-35	Public Health – Food Service Inspection Report; 11/5/14 (NAXOS-AMFAM05664-5667)	Disputed	Disputed	FRE 104(b); FRE 401-403; FRE 404; FRE 801(c); FRE 802; FRE 901(a)	
A-36	Secretary of State – LLC records (NAXOS-AMFAM05676-5702)	Disputed	Disputed	FRE 104(b); FRE 401-403; FRE 801(c); FRE 802; FRE 901(a)	
A-37	Ewers Report - 9/11/19	Disputed	Disputed	MIL; FRE 104(b); FRE 401-403; FRE 801(c); FRE 802	
A-38	Ewers Supplemental Report – 10/21/19	Disputed	Disputed	MIL; FRE 104(b); FRE 401-403; FRE 801(c); FRE 802	
A-39	Ewers Rebuttal Report – 12/6/19	Disputed	Disputed	MIL; FRE 104(b); FRE 401-403; FRE 801(c); FRE 802; FRCP 37(c)(1)	
A-40	Milo's Island Application for Insurance – 8/23/14 (Lim Production 000244-250)	Disputed	Disputed	FRE 104(b); FRE 401-403; FRE 801(c); FRE 802; FRE 901(a); RCW 48.18.080(1)	
A-41	Cancellation Request Fax – 10/30/13 (Lim Production 000285)	Disputed	Disputed	FRE 104(b); FRE 401-403; FRE 801(c); FRE 802; FRE	

[PROPOSED] PRETRIAL ORDER  
(2:18-cv-01287-JLR) - 27

**KELLER ROHRBACK L.L.P.**

1201 Third Avenue, Suite 3200  
Seattle, WA 98101-3052  
TELEPHONE: (206) 623-1900  
FACSIMILE: (206) 623-3384

				901(a)	
A-42	Request for Authentic Loss Information – 10/15/13 (Lim Production 000287-289)	Disputed	Disputed	FRE 104(b); FRE 401-403; FRE 801(c); FRE 802; FRE 901(a)	
A-43	Farmer's Loss Run – 10/15/13 (Lim Production 000305-306)	Disputed	Disputed	FRE 104(b); FRE 401-403; FRE 801(c); FRE 802; FRE 901(a)	
A-44	Cancellation Request Fax – 10/29/13 (Lim Production 000312-316)	Disputed	Disputed	FRE 104(b); FRE 401-403; FRE 801(c); FRE 802; FRE 901(a)	
A-45	Naxos Application for Insurance - (Lim Production 000292-304)	Disputed	Disputed	FRE 104(b); FRE 401-403; FRE 801(c); FRE 802; FRE 901(a); RCW 48.18.080(1)	
A-46	William Loukas – Criminal Records	Disputed	Disputed	MIL, FRE 104(b); FRE 401-403; FRE 404; FRE 608; FRE 609; FRE 801(c); FRE 802; FRE 901(a)	
A-47	John Loukas – Criminal Records	Disputed	Disputed	MIL; FRE 104(b); FRE 401-403; FRE 404; FRE 608; FRE 609; FRE 801(c); FRE 802; FRE 901(a)	

[PROPOSED] PRETRIAL ORDER  
(2:18-cv-01287-JLR) - 28

**KELLER ROHRBACK L.L.P.**

1201 Third Avenue, Suite 3200  
Seattle, WA 98101-3052  
TELEPHONE: (206) 623-1900  
FACSIMILE: (206) 623-3384

A-48	Trina Loukas – Bankruptcy Records; Case No. 11-16003	Disputed	Disputed	FRE 104(b); FRE 401- 403; FRE 404; FRE 608; FRE 901(a)	
A-49	Gayle Anderson – Bankruptcy Records; Case No. 10-11440	Disputed	Disputed	FRE 104(b); FRE 401- 403; FRE 404; FRE 608; FRE 901(a)	
A-50	Gayle Anderson – Bankruptcy Records; Case No. 17-12456	Disputed	Disputed	FRE 104(b); FRE 401- 403; FRE 404; FRE 608; FRE 901(a)	
A-51	Naxos Profit and Loss Comparison	Disputed	Disputed	FRE 104(b); FRE 401- 403; FRE 801(c); FRE 802; FRE 901(a)	
A-52	American Family Estimates and Reports (NAXOS- AMFAM00875-876; 1267-1270; 832-874; 909-926; 1678-1700; 2012-2027; 2174-2195; 1423-1454; 1561)	Disputed	Disputed	FRE 104(b); FRE 401- 403; FRE 801(c); FRE 802; FRE 901(a)	
A-53	American Family Correspondence (NAXOS- AMFAM01173-1179; 1245-1247; 1271-1273; 1349-1375; 2009-2010)	Disputed	Disputed	FRE 104(b); FRE 401- 403; FRE 801(c); FRE 802; FRE 901(a)	
A-54	Erik Boe Emails (NAXOS- AMFAM00310; 1002- 1041; 1043-1057; 1059- 1063; 1171-1172; 1243- 1244; 1248-1266; 1274- 1276; 1462; 1479-1480;	Disputed	Disputed	FRE 104(b); FRE 401- 403; FRE 801(c); FRE 802; FRE 901(a)	

[PROPOSED] PRETRIAL ORDER  
(2:18-cv-01287-JLR) - 29

**KELLER ROHRBACK L.L.P.**

1201 Third Avenue, Suite 3200  
Seattle, WA 98101-3052  
TELEPHONE: (206) 623-1900  
FACSIMILE: (206) 623-3384

	1484-1485; 1703-1859; 1929-1930; 2004-2006; 2008; 2011; 2107-2110; 311-333; 444-448; 634- 636; 794-796; 948-950; 981-1001)				
A-55	IRS Notice of Levy (NAXOS- AMFAM01113-1118)	Disputed	Disputed	FRE 104(b); FRE 401- 403; FRE 801(c); FRE 802; FRE 901(a)	

The Parties' Objection Code:

MIL	This evidence is the subject of a motion in limine pending before the Court.
RCW 48.18.080(1)	No application for the issuance of any insurance policy or contract shall be admissible in evidence in any action relative to such policy or contract, unless a true copy of the application was attached to or otherwise made a part of the policy when issued and delivered. There is no evidence any insurance application was attached or made part of the relevant policy(s) when issued and delivered to Naxos.

### VIII. ACTION BY THE COURT

- (a) This case is scheduled for trial before a jury on March 9, 2020.
- (b) Trial briefs shall be submitted to the Court on or before March 2, 2020.
- (c) Jury instructions requested by either party shall be submitted to the Court on or before March 2, 2020. Suggested questions of either party to be asked of the jury by the Court on voir dire shall be submitted to the Court on or before March 2, 2020.

(d) Court rulings (if any):

- American Family violated WAC 284-30-370.

This order has been approved by the parties as evidenced by the signatures of their counsel.

This order shall control the subsequent course of the action unless modified by a subsequent order.

This order shall not be amended except by order of the court pursuant to agreement of the parties

[PROPOSED] PRETRIAL ORDER  
(2:18-cv-01287-JLR) - 30

**KELLER ROHRBACK L.L.P.**

1201 Third Avenue, Suite 3200  
Seattle, WA 98101-3052  
TELEPHONE: (206) 623-1900  
FACSIMILE: (206) 623-3364

1 or to prevent manifest injustice.

2 DATED this 18th day of February, 2020.

3 **KELLER ROHRBACK L.L.P.**

4 By /s/ Ian S. Birk

5 Ian S. Birk, WSBA #31431  
6 Jeff N. Comstock, WSBA #41575  
7 1201 Third Avenue, Suite 3200  
8 Seattle, WA 98101  
9 Tel: 206-623-1900 | Fax: 206-623-3384  
10 ibirk@kellerrohrback.com  
11 jcomstock@kellerrohrback.com  
12 Attorneys for Plaintiff

13 **LEATHER & ASSOCIATES, PLLC**

14 /s/ Eric J. Neal (via telephonic approval)

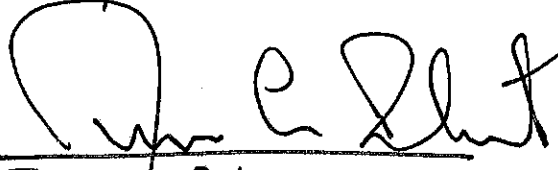
15 Eric J. Neal, WSBA #31863  
16 1848 Westlake Avenue N, Suite 100  
17 Seattle, WA 98109  
18 P: (206) 467-5444/F: (206) 467-5544  
19 eneal@leatherlaw.com  
20 Attorneys for Plaintiff

21 **COLE | WATHEN | LEID | HALL, P.C.**

22 /s/ Jeremy L. Muth (via telephonic approval)

23 Rory W. Leid, III, WSBA #25075  
24 Jeremy L. Muth, WSBA #52055  
25 1505 Westlake Avenue North, Suite 700  
26 Seattle, WA 98109-6243  
Tel: (206) 622-0494 | Fax: (206) 587-2476  
rleid@cwlhlaw.com | jmuth@cwlhlaw.com  
Attorneys for Defendant

27 Dated this 4th day of March, 2020.


28   
29 James L. Robart  
30 United States District Judge

**CERTIFICATE OF SERVICE**

I certify that on 18<sup>th</sup> day of February, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the persons listed below:

Rory W. Leid, III, WSBA #25075  
Jeremy L. Muth, WSBA #52055  
Cole Wathen Leid Hall, P.C.  
303 Battery Street  
Seattle, WA 98121  
E: [rleid@cwlhlaw.com](mailto:rleid@cwlhlaw.com); [jmuth@cwlhlaw.com](mailto:jmuth@cwlhlaw.com)  
*Attorneys for Defendant*

Eric J. Neal, WSBA #31863  
Lether Law Group  
1848 Westlake Avenue North, Suite 100  
Seattle, WA 98109  
E: [eneal@letherlaw.com](mailto:eneal@letherlaw.com)  
*Attorneys for Plaintiff*



---

Megan Johnston, Legal Assistant  
Keller Rohrback L.L.P.  
1201 Third Avenue, Suite 3200  
Seattle, WA 98101  
(206) 623-1900

4841-0075-4613, v. 1  
4841-0075-4613, v. 1